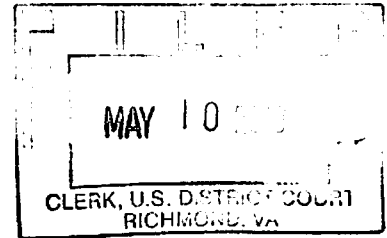


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



COREY E. JOHNSON,

Petitioner,

v.

Civil Action No. **3:07CV731**

LORETTA K. KELLEY,

Respondent.

MEMORANDUM OPINION

The matter is before the Court for review of the latest in a series of motions for relief under Federal Rule of Civil Procedure 60(b) filed by Petitioner.

Petitioner is a Virginia prisoner proceeding *pro se*. Petitioner was convicted in the Circuit Court for the City of Richmond of two counts of murder and two counts of use of a firearm in commission of those offenses. This Court previously has dismissed a § 2254 petition by Petitioner challenging the above described convictions. *See Johnson v. Kelly*, No. 3:07cv00731, 2008 WL 3992638, at *1-2 (E.D. Va. Aug. 28, 2008). Thereafter, Petitioner submitted a series of motions for relief under Federal Rule of Civil Procedure 60(b). By Memorandum Opinion and Order entered on March 23, 2010, the Court denied the latest of these Rule 60(b) motions. *See Johnson v. Kelly*, Nos. 3:10cv00086, 3:07cv00731, 2010 WL 1172646, at *1 (E.D. Va. Mar. 23, 2010) (concluding motion was properly construed as a Rule 60(b)(3) motion, rather than a successive § 2254 petition, and denying motion as untimely). On April 16, 2010, the Court received the present Rule 60(b) motion from Petitioner.

In his present Rule 60(b) motion, Petitioner raises essentially the same argument as he did in his motion denied on March 23, 2010. Specifically, Petitioner contends that the Court

erroneously dismissed his § 2254 petition as procedurally barred. *Id.* Petitioner, however, now contends that he is entitled to relief under Rule 60(b)(4). “A judgment is not ‘void’ under Rule 60(b)(4) merely because it is erroneous. ‘It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.’” *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004) (quoting *Schwartz v. United States*, 976 F.2d 213, 217 (4th Cir. 1992)). Petitioner fails to demonstrate that the Court lacked subject matter jurisdiction or acted in a manner inconsistent with due process. Accordingly, Petitioner’s Rule 60(b)(4) motion (Docket No. 32) will be DENIED. The Court will deny Petitioner a certificate of appealability.

An appropriate Order shall issue.

Date: MAY 10 2010
Richmond, Virginia

<p>/s/ Richard L. Williams United States District Judge</p>
